

Let's

Read

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
THE CITY OF SEATTLE TO CITY OF)
SEATTLE, DEPARTMENT OF)
ENGINEERING)

WALLINGFORD COMMUNITY COUNCIL,)
INC.; MONTLAKE COMMUNITY CLUB;)
WILLIAM L. MC CORD, and RUTH)
AND WAYNE MOORE,)

Appellants,)

v.)

CITY OF SEATTLE and CITY OF)
SEATTLE, DEPARTMENT OF)
ENGINEERING,)

Respondents.)

SHB Nos. 203, 203-A, 203-B
and 203-C

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

These consolidated matters, requests for review of a substantial
development permit issued to the City of Seattle, Department of
Engineering, for the construction of a roadway within the wetlands of
Lake Union, came on regularly for hearing in Seattle, Washington on
February 19 and 20, 1976 and March 8 and 9, 1976 before Board members

1 Walt Woodward, Chris Smith, Gerald D. Probst, Gordon Y. Ericksen and
2 Robert E. Beaty. Ellen D. Peterson, hearing officer, presided.

3 Appellant Montlake Community Club was represented by Rita Griffith;
4 appellants William L. McCord and Ruth Moore appeared pro se; Carl
5 Slater's representation for the Wallingford Community Council was limited
6 to an opening statement; Charles Brown, Assistant Corporation Counsel,
7 appeared for respondent City of Seattle, Department of Engineering.

8 Having heard the testimony, having examined the exhibits, having
9 reviewed the pre-hearing brief filed by appellants and the closing
10 arguments submitted by all parties, the Shorelines Hearings Board makes
11 the following

12 FINDINGS OF FACT

13 I

14 On September 16, 1975, the City of Seattle issued a substantial
15 development permit to the City of Seattle, Department of Engineering,
16 for Phase I of its proposed relocation of Northeast Pacific Street.
17 Appellants timely appealed and the matters were consolidated.

18 II

19 The Board finds that the primary purpose of the relocation of
20 Northeast Pacific Street is the elimination of two existing arterials,
21 Northeast 40th Street and Northeast Pacific Street from within the
22 University of Washington's West Campus area. As proposed, Northeast
23 Pacific Street would be relocated southerly to the extremity of the
24 University's residential and academic areas, thus creating a superblock
25 facilitating more flexible development. An incidental incentive is the
26 replacement of two substandard arterials with a safer, more efficient

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 facility although such replacement is not a traffic problem priority
2 for the City. A third rationale for the Phase I alignment is its
3 location within the Northlake Urban Renewal District which qualifies the
4 construction for federal funds amounting to two million of the project's
5 3.2 million dollar cost. As the alignment benefits its development plans,
6 the University of Washington has contracted with the City to contribute
7 \$617,000 for the construction of Phase I.

8 III

9 The relocation project has been proposed by the respondents to
10 be constructed in two phases. The Phase I arterial which is the subject
11 of this request for review, will be 0.65 miles in length, generally
12 paralleling the shoreline and extending from approximately 600 feet east
13 of 15th Avenue N.E. on existing Northeast Pacific Street westerly to the
14 intersection of 6th Avenue N.E. and Northeast Northlake Way (see
15 Exhibit R-21). East of Brooklyn Avenue East the facility will be four
16 lanes. The permit limits the roadway west of Brooklyn Avenue East to
17 two lanes. Construction for Phase I would include all permanent improve-
18 ments between the project's eastern terminus and the University Bridge
19 and temporary roadway improvements between the University Bridge and
20 6th Avenue Northeast. The planned roadway would lie within the wetlands
21 of Lake Union from its intersection with realigned N.E. Boat Street
22 just west of 11th Avenue N.E. through to its terminus at 6th Avenue
23 Northeast.

24 The new arterial, while widening those existing streets over which
25 it passes to a maximum of 56 feet, would incorporate planted median
26 strips, traffic islands, concrete walks, and bikelanes. The project is
27 also to include improved roadway drainage facilities, four new traffic

1 FEIS and directed the Department of Engineering to proceed with the
2 alignment now before the Board. This alignment did approximate the 4-E
3 alignment, particularly in its impact on the shoreline, but the City's
4 directive reduced the number of lanes to two, similar to the 11-K
5 alternative.

6 An environmental impact assessment (Exhibit R-7), with supplemental
7 information, (Exhibit R-8) addressing the alignment as defined by the
8 Council, was provided by the Department of Engineering to the Department
9 of Community Development on September 2, 1975.

10 V

11 Draft Four of Seattle's master program was in effect at the time
12 the permit was issued in this matter. Under Draft Four, Table 2, Use
13 Activity Regulation, major arterials are designated as a conditional use.
14 A footnote to this conditional use, Section 5.4.19(a) provides:

15 Highways, freeways, major arterials, . . . or expansions
16 thereof will not be permitted when designated as a through
17 route parallel to the shoreline and only incidentally related
to shoreline facilities.

18 Section 5.3.08 of Draft Four, Shoreline Conditional Uses, provides
19 that conditional shoreline use permits authorized pursuant to this
20 section are subject to the approval of the Washington State Department
21 of Ecology. The permit issued to respondent was not submitted to the
22 Department. In this regard, RCW 90.58.140(11) provides that:

23 Any permit for a conditional use by local government under
24 approved (emphasis added) master programs must be submitted
to the department for its approval or disapproval.

25 A further relevant passage of the Shoreline Management Act (SMA) is
26 RCW 90.58.100(5) which requires that ". . . Any such varying (permit

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 for conditional use) shall be allowed only if extraordinary circumstances
2 are shown and the public interest suffers no substantial detrimental
3 effect."

4 VI

5 In assessing the environmental impact of the proposed project, it
6 must be initially noted that the project site is at present ecologically
7 and esthetically blighted. The commercial cluster along the shoreline,
8 the haphazard development of mixed uses in the area, the paucity of
9 inviting public recreational sites or scenic vantages create a context
10 for a decision regarding "shorelines" in this matter recognizably
11 different from that which exists when such shorelines are pristine or
12 even capable of a retardation of overdevelopment.

13 VII

14 The Board did not find that waterfront businesses within the project
15 area, most of which are water-dependent or water-related, would be
16 adversely affected by the proposed relocation. The net predictable
17 effect of the realignment and roadway improvements is in fact increased
18 access to such commercial concerns.

19 Nor was it found that the project will conflict with the few
20 amenities existing or proposed for the vicinity, i.e., a small waterfront
21 park at the base of Brooklyn Avenue East or the city park planned for
22 beneath the I-5 bridge.

23 VIII

24 Testimony at hearing supported the conclusions of the FEIS that air
25 and noise impacts occasioned by the realignment of the arterials would
26 be more in the nature of a transferring of such impacts from the existing

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 routes rather than the generating of an overall increase.

2 It can be argued that an improved arterial will attract traffic
3 not previously traversing the area's existing confusing street pattern.
4 However, considering present air quality and noise levels at the site,
5 no appreciable adverse effect is foreseen therefrom.

6 IX

7 The roadway's potential for impeding pedestrian circulation to
8 the shorelines was carefully reviewed by the Board. It was found that
9 the roadway which includes ramps, bikelanes and traffic signals is
10 designed to improve pedestrian safety and to minimize any impediment to
11 shoreline access. Again, the existing warren of streets renders it
12 difficult to quantify and assess the effect of a smoother arterial on
13 pedestrian habits in the area.

14 Contrary to appellants' contention, there is nothing in the
15 project's design to preclude a transit element's being introduced.
16 Indeed, with the improvement of the arterial, such public transit
17 possibilities would seem to be enhanced.

18 X

19 Any Conclusion of Law hereinafter stated which may be deemed a
20 Finding of Fact is hereby adopted as such.

21 From these Findings, the Shorelines Hearings Board comes to these

22 CONCLUSIONS OF LAW

23 I

24 Pursuant to RCW 90.58.140(2)(a), standards which the Board is to
5 apply in reviewing a substantial development permit are (a) the policy
26 of the Shoreline Management Act, RCW 90.58.020, (b) the guidelines and

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 regulations promulgated pursuant thereto by the Department of Ecology,
2 WAC 173-16, and (c) "so far as can be ascertained, the master program
3 being developed for the area."

4 II

5 The DOE guideline for "Road and Railroad Design and Construction"
6 provides little guidance for the Board in disposing of this matter:

7 Whenever feasible, major highways, freeways and railways
8 should be located away from shorelands, except in port and
9 heavy industrial areas, so that shoreland roads may be
reserved for slow-moving recreational traffic.
WAC 173-16-060(18.a).

10 III

11 The requirement that all permits for conditional uses must be
12 submitted to the Department of Ecology for approval is not ascertainable,
13 i.e., enforceable, until a master program has been approved by the DOE.
14 Despite any draft provision to the contrary, neither local government nor
15 this Board can expand the Department's authority beyond the clear and
16 express statutory language which limits such Departmental review of
17 conditional uses to those under an "approved master program." Similarly,
18 it cannot have been the legislative intent to delay the review of all
19 applications for uses designated as conditional within draft master
20 programs until the extensive process of local and DOE approval of such
21 master programs had occurred.

22 Nonetheless, the provision of the SMA, RCW 90.58.100(5), which
23 establishes a more stringent standard for those uses which are designated
24 as conditional, can and should be applied by the Board in its review of
25 the instant project as the designation itself within the draft master
26 program is ascertainable.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Similarly the language of the DOE guideline promulgated pursuant to
2 such provision can be applied:

3 Conditional use permits will be granted only after the
4 applicant can demonstrate all of the following:

5 (a) The use will cause no unreasonably adverse effects
6 on the environment or other uses.

7 (b) The use will not interfere with public use of
8 public shorelines.

9 (c) Design of the site will be compatible with the
10 surroundings and the Master Program.

11 (d) The proposed use will not be contrary to the
12 general intent of the master program. (WAC 173-16-070(1))

13 IV

14 The segmentation of the relocation project into two phases, albeit
15 primarily for economic reasons, is rational and does not constitute the
16 piecemealing of development which this Board has consistently rejected.
17 Nor is the alignment of Phase I coercive on a specific alignment for
18 Phase II although the options for such further development are reduced.

19 V

20 The Board is convinced that despite the apparent and unfortunate
21 failure to seek or receive the recommendation of the Environmental
22 Impact Review Committee, the project's history reflects a continuous
23 attempt on the part of respondent to acquire citizen input on projected
24 impacts. Additionally, the procedure followed by the City in its
25 reliance on an Environmental Impact Assessment to update an otherwise
26 thorough FEIS appears, under the circumstances of this case, to have been
27 a reasonable and appropriate process which satisfies SEPA requirements.

28 VI

29 With regard to the contested efficiency of the facility, it is

30 FINAL FINDINGS OF FACT,
31 CONCLUSIONS OF LAW AND ORDER

1 difficult to credit appellants' arguments objecting to the roadway's
2 failure to accommodate traffic flow when the reduction of the facility
3 from four lanes to two was made responsive to the community's objection.
4 Judged solely as a traffic facility, Phase I is an improvement over the
5 street network existing in the area and it was not established by
6 appellants that Phase I would increase congestion.

7 While the Board does not sit to quibble over design specifications,
8 it is concerned that the roadway is not designed to ensure that
9 pollutants from drainage are removed prior to the drainage's discharge
10 into Lake Union.

11 VII

12 Appellants have failed to meet their burden that Phase I of the
13 relocation of Northeast Pacific Street will aggravate an already
14 degraded environment, impair existing water-related activities, or
15 preempt reasonably projected development priorities within the shore-
16 lines.

17 VIII

18 In applying the more stringent standard established by the SMA
19 for conditional uses, the Board concludes that (a) extraordinary
20 circumstances in the form of a need to resolve land use and traffic
21 concerns do exist in this instance and (b) there has been no showing by
22 appellants that the public interest would suffer any, let alone a
23 "substantial," detrimental effect.

24 The Board further concludes that the criteria for a conditional use
25 permit established under the DOE guideline as detailed in Conclusion of
26 Law III have been met.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Further, the Board concludes that Section 5.4.19(a) of the draft
2 master program was never intended to bar a roadway which only marginally
3 intrudes within the wetlands, particularly when, as here, its
4 incidental effects on "shoreline facilities" is positive (Finding of
5 Fact VII) and where the existing shorelines condition is as has been
6 described herein.

7 IX

8 Pervading the Board's decision in this matter is its faith in
9 the SMA as a critical defense against abuses of the shorelines and its
10 concern that the Act's effectiveness not be jeopardized by inappropriate
11 reliance on its provisions to dictate or deter land use decisions with
12 a peripheral and de minimis impact on the shoreline.

1 Any Finding of Fact which should be deemed a Conclusion of Law
2 is hereby adopted as such

3 Therefore, the Shorelines Hearings Board issues this

4 ORDER

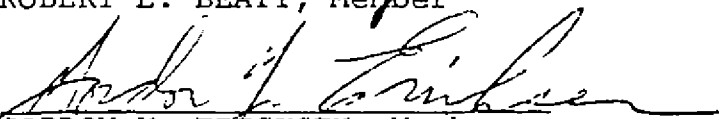
5 The action of the City of Seattle in granting the permit to
6 respondent is affirmed; the matter is remanded to the City of Seattle for
7 inclusion in the permit of a construction condition which will require
8 that the project's design include oil separators or like devices to
9 ensure that pollutants are removed from roadway drainage prior to its
10 discharge into Lake Union.

11 DATED this 16th day of April, 1976.


12 SHORELINES HEARINGS BOARD

13 
14 CHRIS SMITH, Chairman

15 
16 ROBERT E. BEATY, Member

17 
18 GORDON Y. ERICKSEN, Member

19 
20 GERALD D. PROBST, Member

21 
22 WALT WOODWARD, Member

23
24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER